

JUSTO MORALES,	)	No. C 10-01199 JW (PR)
	)	
Petitioner,	)	ORDER TO SHOW CAUSE
	)	
vs.	)	
	)	
	)	
C. NOLL, Warden,	)	
	)	
Respondent.	)	
	)	
	)	

## BACKGROUND

Order to Show Cause  
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Petitioner appealed the conviction; the state appellate court affirmed the conviction and the state high court denied review. (Pet. at 3.) Petitioner also filed state habeas which were denied. (Pet., Ex. C.) Petitioner filed the instant federal habeas petition on March 23, 2010.

## DISCUSSION

### A. Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

### B. Legal Claims

Petitioner raises the following grounds for federal habeas relief which he references in the state appellate court decision in his direct appeal, (Pet. at 6): 1) the trial court erred in admitting evidence of his prior driving record; 2) the trial court erroneously instructed the jury on assumption of the risk and misinstructed on the defense of voluntary intoxication, the knowledge element of hit-and-run driving, and the required concurrence of act and mental state; 3) the trial court erred in refusing his instructing defining implied malice; and 4) the trial court erred in imposing an upper term for driving while intoxicated. (Pet., Ex. A at 2.) Liberally construed, petitioner’s claims appear cognizable under § 2254 and merit an answer from respondent.

## CONCLUSION

For the foregoing reasons and for good cause shown,

1. The clerk shall serve by certified mail a copy of this order and the

petition and all attachments thereto on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.

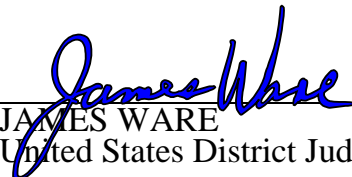
2. Respondent shall file with the court and serve on petitioner, within **sixty (60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within **thirty (30) days** of his receipt of the answer.

3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court and serve on respondent an opposition or statement of non-opposition within **thirty (30) days** of receipt of the motion, and respondent shall file with the court and serve on petitioner a reply within **fifteen (15) days** of receipt of any opposition.

4. Petitioner is reminded that all communications with the court must be served on respondent by mailing a true copy of the document to respondent's counsel. Petitioner must also keep the court and all parties informed of any change of address.

DATED: November 30, 2010

  
JAMES WARE  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JUSTO MORALES,

Petitioner,

v.

C. NOLL, Warden,

Respondent.

Case Number: CV10-01199 JW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 12/1/2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Justo Morales F-31628  
Salinas Valley State Prison  
P. O. Box 1050  
Soledad, CA 93960

Dated: 12/1/2010

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk